IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No.2840 of 2006 (O&M)
Date of Decision : 29.10.2007

M/s Paradise Transporters Private Ltd. & Ors.

.....Appellants

Versus

Partap Singh & others.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Vivek Khatri, advocate
for the appellants.

Mr.Inderpal Goyat, Advocate
for appellant No.1.

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VINOD K. SHARMA, J. (ORAL)

This judgment shall dispose of R.S.A. Nos. 2840 to 2847 of 2006 titled M/s Paradise Transporters Private Ltd. & Ors. Versus Partap Singh & others, M/s Paradise Transporters Private Ltd. & Ors. Versus Jagdev Singh & others, M/s Paradise Transporters Private Ltd. & Ors. Versus Dalbir Singh & others, M/s Paradise Transporters Private Ltd. & Ors. Versus Dharampal Sheoran & others, M/s Paradise Transporters Private Ltd. & Ors. Versus Capt. Mani Ram (Retd.) & others, M/s Paradise Transporters Private Ltd. & Ors. Versus & Ram Kumar others, M/s Paradise Transporters Private Ltd. & Ors. Versus Balbir & others and M/s Paradise Transporters Private Ltd. & Ors. Versus Lt. Col. Sajjan Singh Dhillon & others.

For the sake of brevity, facts are being taken from R.S.A. No. 2840 of 2006 titled M/s Paradise Transporters Private Ltd. & Ors. Versus Partap Singh & others.

This regular second appeal has been filed against the judgment and decree passed by the learned Courts below vide which suit filed by plaintiff-respondent No.1 was ordered to be decreed and the appellants have been directed to give rendition of accounts for the use of Tripper Truck.

Plaintiff brought the suit on the plea that he being an ex-servicemen purchased Tripper Truck on hire purchase agreement with defendant No.5 i.e. the Bombay Mercantile Cooperative Bank. The said bank has financed the said truck on the recommendation of defendant No.6 i.e. The Director General Re-settlement (SE), Ministry of Defence, Govt. of India. Under the terms of the agreement entered into between the plaintiff and defendant No.1 i.e. M/s Paradise Transporters Private Ltd. The said Tripper Truck was attached with the company and it was agreed between the parties that the truck would be used only under the instructions of defendant No.1 and the plaintiff would have no right to use the truck independently. It was also the term of the agreement between the parties that the amount earned by the said Tripper Truck would be first paid towards loan installments to defendant No.5 i.e. the Bank and the balance amount would be released to the plaintiff. However, as the defendant No.1 failed to pay the installments and release the amount to the plaintiff, a second agreement was entered into between the parties on 11.2.1995, wherein the parties agreed as under :-

1) That, the first party hereby undertakes to provide the detailed initial accounts and monthly statement of

Account individually in respect of Tipper Trucks of the Ex-Serviceman. Who form second party, by 22 February 1995 at first party Registered office at Hissar or by Registered Post at their respective residential address.

The initial account and monthly statement of account will be duly verified and signed by the above mentioned Director. Every deduction entry be supported by the bills/vouchers or Photostat copy of the same duly attested by the Director. In the absence of which deduction will be treated as null and void. No Bills/ Vouchers will be acceptable from the first party after the specified date.

2. That the first party also undertake to make payment all over dues of loan accounts of respective tipper truck belonging to the second party direct to Bombay Mercantile co-operative Bank, Darya Ganj, New Delhi by 31st March 1995 (Thirty first March one thousand nine hundred ninety five) under the intimation to second party, for the entire period till the date on which the concerned vehicles of the second party are detached from the First Party (PTPL) by mutual consent of both the parties with effect from the date of agreement.

3. That, the Sale proceeds of unserviceable items/ spare parts retrieved from the vehicle will be credited to the accounts of the individual vehicle."

The learned Courts below in view of the agreement entered into

between the parties on 11.2.1995 had ordered defendant Nos.1 to 5 Company and its Directors to render the accounts upto the date of execution of agreement and further held that from the said date the Tripper Truck stood detached with mutual consent of the parties.

The appeal filed by the defendant appellants also failed and the findings recorded by the learned Court below were affirmed.

The learned counsel appearing on behalf of the appellants has challenged the judgment and decree passed by the learned Courts below firstly on the plea that the learned Courts below were in error in recording a finding that the truck was detached with the mutual consent of the parties. The contention of the learned counsel for the appellants was that in view of the original agreement entered into between the parties the arrangement was to continue for a minimum period of five years and, therefore, was not open to the plaintiff to have detached his truck unilaterally. This plea of the appellants cannot be accepted in view of the terms of the agreement dated 11.2.1995 entered into between the parties which clearly stipulated the detachment of the truck from the date of execution of agreement.

The learned Courts below were justified in ordering the defendants to give rendition of accounts in respect of the truck till the date of agreement i.e. 11.2.1995.

The learned counsel for the appellants contended that the suit filed by the plaintiff was not competent in view of the law laid down by the Hon'ble Supreme Court in the case of ***K.C. Skaria Vs. Govt. of State of Kerala and Anr. 2006(1) R.C.R. (Civil) 460*** wherein the Hon'ble Supreme Court has been pleased to lay down as under :-

> "A. Civil Procedure Code, Order 20 Rule 16 and Order 21 Rules 13, 15 and 16- Suit for rendition of accounts- Maintainability of suit for rendition of accounts – Order 20 Rule 16 CPC does not create or confer any substantive right to seek rendition of accounts in any particular type of case nor in all types of cases – It only refers to a rule of procedure and would apply where there is an existing right to seek rendition of accounts – Where a person was aware of the amounts which he paid and the amount he received and was not prevented from maintaining his own accounts, he cannot maintain a suit for rendition of accounts is an unusual form of relief granted only in certain specific cases where there is no other mode of getting or granting the relief available with the plaintiff – A contractor who executed the work of the Govt., knew the cost of his work and payments already received by him – He can maintain a suit for recovery for the balance amount but cannot get any relief by filing a suit for rendition of accounts."

However, the judgment of the Hon'ble Supreme Court does not in any way bar the maintainability of the case wherein the parties with consent enter into an agreement to render accounts. Therefore, judgment relied upon by the learned counsel for the defendant appellant does not support the case in any way, in view of observations made herein above. It was duty of the defendant appellant to have paid the installment to the Bank and balance amount to the plaintiff once the said arrangement was not complied with the learned Courts below were justified in ordering rendition

of accounts, as well as direction to pay monthly installments in respect of the truck till the date of agreement i.e. 11.2.1995 when the truck was detached.

No ground for interference is made out nor any substantial question of law arises for consideration by this Court in this appeal.

Dismissed.

29.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**